THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT PETITION NO: 28021 of 2005

Dated: 11-12-2006

Between:

Mr.D.R.Hemendra Kumar and another

..... PETITIONER

AND

The Authorised Officer,
Indian Bank Circle Office,
Chittoor and another

.....RESPONDENTS

THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT PETITION NO: 28021 of 2005

O R D E R:

The first petitioner herein is appointed as a dealer by the second respondent-Corporation for sale of their cattle feed manufactured at Chittoor. In connection with the said dealership, the first petitioner furnished bank guarantees to the second respondent-Corporation for a sum of Rs.5,00,000/- and Rs.16,00,000/- at two stages. The said bank guarantees were issued by the first respondent-Bank on the basis of the security given by the second petitioner by depositing title deeds of certain immovable properties.

It is not in dispute that as per the instructions of the second respondent-Corporation, the bank guarantees were encashed.

Pursuant thereto the first respondent-Bank issued a notice dated 22-06-2004 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act') calling upon the petitioners to pay a sum of Rs.15,31,696/- allegedly due as on 31-05-2004. It was followed by a possession notice dated 25-10-2005 under Rule 8(1) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Rules (for short 'the Rules') informing the petitioners that the possession of the secured assets described in the notice was taken. Aggrieved by the said action of the first respondent-Bank, this writ petition is filed seeking a declaration that the possession notice dated 25-10-2005 issued by the first respondent-Bank under Section 13(4) of the Act read with Rule 8 of the Rules is arbitrary, illegal and without jurisdiction.

It is primarily contended by the petitioners that the properties offered as security are agricultural lands and therefore, they do not fall within the purview of the Act. It is also contended that the impugned possession notice, which was not issued without following the mandatory procedure prescribed under the provisions of the Act and Rules, is arbitrary and illegal.

On behalf of the first respondent-Bank, a counter affidavit has been filed denying the plea that the property offered as security is agricultural land. It is further stated that the property in question was earmarked for house plots and the petitioners also obtained approval of the lay out from the Director of Town and Country Planning, Government of Andhra Pradesh, vide proceedings dated 23-04-2004. The other allegations were also categorically denied and it is stated that the proceedings under Section 13 of the Act were initiated duly following the procedure prescribed under the Act and the Rules.

I have heard the learned counsel for both the parties and perused the material on record.

The dispute raised by the petitioners as to the nature of the secured assets, being a pure question of fact, cannot be enquired into and decided by this Court. No other point is urged nor any other material is placed before this Court to establish the impugned action was in violation of any of the statutory provision. At any rate, once notice under Section 13(4) of the Act is issued, any person aggrieved may make an application to the Debts Recovery Tribunal having jurisdiction in the matter, in which event the Tribunal after examining the facts, circumstances and the evidence produced by the parties would record a finding and in case it is found that action taken by the secured creditor is not in accordance with the provisions of the Act and the Rules made thereunder, can order restoration of possession of the secured assets. In the light of such an efficacious remedy available under the Act, and keeping in view that the matter involves several disputed questions of fact, the petitioners cannot straightaway invoke the extraordinary jurisdiction of this Court under Article 226 of the

Constitution of India.

Accordingly, granting leave and liberty to the petitioners to work out the alternative statutory remedy, this writ petition is dismissed. No costs.

G. ROHINI, J

Dated: 11-12-2006
KLP